

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JUAN BARELA

11 Accused as Suspect in Child Abuse  
Arrested, Cover Cited for Obstruction

12 LYNN BARELA

13 Joined as Party of Interest,

Plaintiffs,

14 v.

15 ELLIS W. JOHNSON, M.D.

16 In Individual Capacity and  
In Professional Capacity as Family Physician

17 LORI JOHNSON

18 In Individual Capacity and  
In Professional Capacity as Medical Assistant,

19 Defendants.

Case No. C05-5785 RBL

20 ORDER GRANTING DEFENDANTS'  
21 MOTION FOR SUMMARY JUDGMENT

22 THIS MATTER is before the court on the Defendants' Motion for Summary Judgment. The  
23 defendants, Dr. Ellis Johnson and his nurse Lori Johnson, seek dismissal of all of plaintiffs' claims against  
them.

24 The Plaintiff, Juan Barela, claims that the Defendants were negligent when they reported that one of  
25 their patients, who is Barela's minor grandchild, presented at their clinic with what Dr. Johnson suspected was  
26 symptoms of child sexual abuse. Defendant reported his suspicions to Child Protective services ("CPS") under  
27 Chapter 26.44 RCW. That report apparently led to the arrest of Mr. Barela, and to his separation from the  
child. Plaintiff has sued pro se, alleging what appear to be four causes of action:

28 1. Negligence, based on his claim that the report of sexual abuse was unfounded;

1       2. Medical malpractice, based on his claim that the doctor was negligent in determining that there had  
 2       been sexual abuse;

3       3. Racial discrimination, based on what he claims was a racially charged statement made by Defendant  
 4       Lori Johnson; and

5       4. Res ipsa loquitur, which is another manner of asserting plaintiff's negligence claim.

6           Defendants seek the dismissal of each of these claims, arguing that a Washington Statute both requires  
 7       health care providers to report suspected child abuse and provides immunity to the providers for doing so.  
 8       They argue that because the Plaintiff was not the Defendant's patient, he can identify no duty to him, and  
 9       cannot support his medical malpractice claim as a matter of law. They also argue that the plaintiff has not and  
 10      cannot establish a racial discrimination claim under any Constitutional or statutory protection, and that he  
 11      cannot support his claim for such a violation under 42 U.S.C. §1983. Finally, Defendants argue that the  
 12      doctrine of res ipsa loquitur – which is simply a manner of proving negligence where the fact of negligence is  
 13      obvious, but the precise breach of duty cannot be identified - does not apply.

14           The Plaintiff's response is based on his sealed affidavit and similar affidavits from two minors regarding  
 15      the factual context of the case. His pro se brief is emphatic, if difficult to follow. It appears to argue primarily  
 16      that there are questions of fact for the jury to decide, and that the statutes regarding the investigation of child  
 17      abuse are designed to protect parents as well as children.

18           **Summary Judgment Standard.**

19           Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving  
 20      party, there is no genuine issue of material fact which would preclude summary judgment as a matter of law.  
 21      Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails  
 22      to present, by affidavits, depositions, answers to interrogatories, or admissions on file, "specific facts showing  
 23      that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere  
 24      existence of a scintilla of evidence in support of the non-moving party's position is not sufficient." *Triton*  
 25      *Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9<sup>th</sup> Cir. 1995). Factual disputes whose resolution would  
 26      not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment.  
 27      *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "summary judgment should be  
 28      granted where the nonmoving party fails to offer evidence from which a reasonable [fact finder] could return

1 a [decision] in its favor.” *Triton Energy*, 68 F.3d at 1220.

2 Plaintiff Barela has appeared pro se. Courts in this Circuit have long held that, particularly where a pro  
3 se petitioner is facing dismissal, the court will construe his or her pleadings liberally. *See Balistreri v. Pacifica*  
4 *Police Dept.* 901 F.2d 696, 699 ( 9<sup>th</sup> Cir.1990); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir.1985)  
5 (“[W]e have an obligation where the petitioner is pro se ... to construe the pleadings liberally and to afford the  
6 petitioner the benefit of any doubt.”) The court is aware of and has applied this rule of liberality.

7 **Discussion.**

8 Despite the fact that the facts are to be viewed in the light most favorable to the non-moving Plaintiff,  
9 the court must grant the Defendants’ Motion on all claims. First, and most importantly, it appears that the  
10 doctor did in fact suspect child abuse and he did so in good faith. Indeed, though the abuse claim may not have  
11 turned out to be true, there does appear to be a basis for the suspicion. RCW 26.44.030(1) required the doctor  
12 to report his suspicions. RCW 26.44.060(1) specifically and unambiguously provides that “any person  
13 participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child  
14 abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such  
15 reporting.”

16 Plaintiff has not and cannot avoid the necessary implication of this statutory scheme: the Defendant  
17 cannot be liable for any negligence in reporting the suspected child abuse. He was required to report his  
18 suspicions, there is no evidence he did so in other than good faith, and he is statutorily immune from liability  
19 for doing so.

20 Second, while the plaintiff parent may be one of the class of persons meant to be protected by the  
21 statutory scheme regarding the investigation of suspected child abuse, that does not change the fact that in  
22 order to assert a medical malpractice claim, the plaintiff must demonstrate that the physician owed that person  
23 some duty of care. The plaintiff does not and cannot establish that he was the Defendant doctor’s patient, or  
24 that he was otherwise the beneficiary of some medical duty of care outside the abuse reporting statutory  
25 scheme. The Plaintiff’s medical malpractice claim fails as a matter of law.

27 Third, the Plaintiff asserts a racial discrimination claim. Its basis factually is the claimed statement by  
28 Defendant Lori Johnson to a minor child (“KB”) that “you probably don’t know it yet, but if you hang out with

1 Mexicans, people will think you a tramp.” KB testifies that she identified Lori Johnson’s daughter at school  
2 and told her grandfather that “that is the girl whose mother [said that to me.]” The timing and context of this  
3 statement is not addressed. Also lacking is some explanation of how KB knew that her classmate’s mother  
4 was the person who allegedly said this to her. And, in any event, the doctor and not the assistant made the call  
5 to CPS and there is no evidence that Lori Johnson played a role in that decision.

6 The legal basis for Plaintiff’s asserted §1983 claim is not clear. He does not articulate the constitutional  
7 or statutory right alleged to violated by this patently offensive remark, or how his own rights have been  
8 violated in an actionable way by it. The Plaintiff provides no evidence beyond the statement that the doctor’s  
9 report was based on any racial bias. There is simply no evidence supporting the inference that the report made  
10 by the Defendant doctor, and its effect on the Plaintiff, was related in any way to the alleged statement made  
11 by Defendant Lori Johnson to a non-party minor.

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13 ORDERED, ADJUDGED and DECREED that the motion of Defendants Ellis W. Johnson, M.D.  
14 and Lori Johnson for summary judgment of dismissal of plaintiffs’ claims is **GRANTED**. It is further

15 ORDERED, ADJUDGED and DECREED that plaintiffs’ claims against defendants Ellis W.  
16 Johnson, M.D. and Lori Johnson be and hereby are **DISMISSED WITH PREJUDICE**.

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DATED this 23<sup>rd</sup> day of October, 2006.

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RONALD B. LEIGHTON

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23 UNITED STATES DISTRICT JUDGE

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